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82-280

NO.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1981

CHARLES H. SYLVAIN, PETITIONER

V.

ESTATE OF EUDORE J. SYLVAIN, ET AL

ON APPEAL FROM THE SUPREME COURT OF

NEW HAMPSHIRE

APPENDIX A

CHARLES H. SYLVAIN
526 CABOT STREET
BEVERLY, MA 01915
617/922-8177

APPENDIX A

HERE ARE SET FORTH, SUCCESSIVELY, THE ORDER OF THE SUPREME COURT OF NEW HAMPSHIRE; THE INITIAL DECREE OF STRAFFORD COUNTY PROBATE COURT OF NEW HAMPSHIRE; THE FINAL DECREE OF THE STRAFFORD COUNTY PROBATE COURT OF NEW HAMPSHIRE; APPROPRIATE RULINGS OF THE STRAFFORD COUNTY PROBATE COURT DURING THE HEARING OF 1/26/82 AND NECESSARY TESTIMONY; ORDER OF THE SUPREME COURT OF NEW HAMPSHIRE OF AN UNTIMELY REHEARING REQUEST.

THE STATE OF NEW HAMPSHIRE
SUPREME COURT

In Case No. 82-100 Estate of Eudore J. Sylvain v. Charles H. Sylvain the court upon March 23, 1982 made the following order; Decision below is summarily affirmed. See rule 25.

Rule 25 (Added) The Supreme Court may at any time on its own motion without notice as it may order dispose of a case summarily, *** or no substantial question is presented ***.

Ralph H. Wood, Clerk

THE STATE OF NEW HAMPSHIRE

STRAFFORD, SS. COURT OF PROBATE

ESTATE OF EUDORE J. SYLVAIN

V. A15445

CHARLES H. SYLVAIN

DECREE

At a Court of Probate held at Dover in said County on the twenty-eighth day of October, 1981, a hearing was held upon the Petition of Priscilla S. Henderson, Executrix of the Estate of Eudore J. Sylvain (said Petition having been filed September 1, 1981 and being dated August

31, 1981), upon the "Plea in Abatement to Quash Petition of September 1, 1981 by Findell, Marsh and Keener on Behalf of Executrix Priscilla S. Henderson" (said "Plea" having been filed September 22, 1981 and being dated September 21, 1981, upon pleading entitled "An Objection to the Amended Notice of 9/29/81; an Objection that the Court Issued no Ruling on Plea of Abatement to Quash Petition of September 1, 1981, by Findell, Marsh and Keener on Behalf of Executrix, Priscilla S. Henderson, dated 9/21/81; Petitioner Objects to the Jurisdiction of his Person" (said pleading having been filed October 19, 1981 and being dated October 15, 1981), each of the latter two pleadings having been filed by Charles H. Sylvain as a legatee, and upon the "Answer and Motion to Dismiss" filed and dated on behalf of

the Executrix October 28, 1981. Appearing at the hearing were Richard H. Marsh, counsel for Priscilla S. Henderson as Executrix, and Charles H. Sylvain representing himself pro se.

At hearing Charles H. Sylvain first profered argument upon his pleadings for relief previously referred to herein. Essentially, as best as the Court could understand Mr. Sylvain's complaints, he requested that the Executrix's petition, as filed September 1, 1981, be dismissed for lack of proper notice. After hearing rebuttal argument of the Executrix, the Court ruled that sufficient and proper notice was provided to Mr. Sylvain, to which his seasonably excepted. In this regard, the Court found that although Mr. Sylvain was initially provided timely notice of the date, place and time for

hearing upon the Executrix's petition filed September 1, 1981, a copy of the Petition had not been forwarded to him. Upon receipt of Mr. Sylvain's "Plea in Abatement" alerting her that he had not received a copy of the petition, the Register forthwith forwarded to him a copy of the petition along with another timely notice of the date, place and time for hearing, which notice was received by Mr. Sylvain on September 29, 1981. It was also found that the content of the Executrix's petition was substantially the same as a similar petition filed by the Executrix on February 13, 1980, except for certain added allegations of fact and prayers for relief. Lastly, it was found from the record that Mr. Sylvain had ample opportunity to prepare for the presentation of his position with regard to

the merits of the Executrix's petition since, at best, Mr. Sylvain was entitled to fourteen days advance notice (Probate Court Rule 27), he filed no motion for continuance, and some twenty-eight days expired between the date he finally received a copy of the petition (September 29, 1981) and the date of hearing (October 28, 1981).

Mr. Marsh then proceeded to argue the Executrix's petition, however, Mr. Sylvain objected to the Court proceeding to the merits of the Petition on the ground that he should be granted a further opportunity to prepare and contest the petition. Essentially, he argued that the Court should rule on his "Plea in Abatement" and then later, at a separate hearing, hear the Executrix's petition. The Court overruled Mr. Sylvain's object-

ion and he seasonably excepted.

Mr. Sylvain then advised the Court that he would not partake of any further aspect of the hearing on the Executrix's petition and he prepared to leave the courtroom. On the assumption that he feared his continued presence of participation would constitute a waiver of his claim of lack of jurisdiction over his person, the Court advised Mr. Sylvain in advance of his departure that he could remain in the Courtroom without participating further, or, if he so chose, the Court would allow him to contest the petition and participate while preserving his right to appeal the issue of jurisdiction. Nevertheless, Mr. Sylvain elected to absent himself.

Mr. Marsh then proceeded with the presentation of the Executrix's petition.

While the Executrix filed and presented a fourth and final account of her administration (with receipts) along with a Petition for Distribution at a contested hearing December 8, 1977, and though both the account and the petition were respectively allowed and granted on that date by the Court, the record reveals that Mr. Sylvain notified the Court of his appeal in accordance with the appeal procedure then extant. Upon receipt of the notice of appeal, the Court ordered that Mr. Sylvain file a $500 cash bond which order was fulfilled. Nevertheless, the record suggests that no reserved case or bill of exceptions was signed by the Court, nor was the appeal otherwise perfected. The Judge who acted upon the account and petition for distribution has deceased and it is not otherwise ascertainable

from the record what occasioned or who was responsible or chargeable for the failure to perfect the appeal.

In consideration of the foregoing, the likelihood of further appeals simply given the history of this estate, and in order to minimize any further delay in the completion of administration, it is hereby ordered:

1. That the allowance of the fourth and final account and the granting of the Petition for Distribution as acted upon December 8, 1977 are hereby vacated, thereby rendering moot any appeal therefrom.

2. That the cash bond of $500, tendered to the Court by Mr. Sylvain in furtherance of his notice of appeal dated December 12, 1977 is hereby discharged. The Register of

Probate shall forthwith return to Charles H. Sylvain the aforesaid cash bond, together with any and all interest accrued and earned thereon.

3. That on or before December 30, 1981, the Executrix shall file with the Court a fourth and final account covering the period from the termination date of the accounting rendered pursuant to her third account through December 22, 1981. Said accounting shall be filed without regard to the prayers for relief contained in the Executrix's petition filed September 1, 1981.

4. That upon the filing of the Executrix's fourth and final account, the Register of Probate shall set the return date at which

said account shall be scheduled for hearing. Notice shall be forwarded to the fiduciary and Charles H. Sylvain, provided that, the notice forwarded Mr. Sylvain shall be by registered mail, return receipt requested. The Register shall forward to Mr. Sylvain, along with the foregoing notice a copy of the Executrix's Fourth and Final Account without regard to whether the fiduciary has previously forwarded to him the same.

5. That pending hearing upon the Executrix's Fourth and Final Account, further ruling upon the Executrix's Petition filed September 1, 1981, is reserved.

6. That while the hearing to be scheduled upon the filing of the

Executrix's Fourth and Final Account shall be limited in its scope to consideration of the account alone, after hearing the Court shall make such order regarding the allowance or disallowance of said account and such further order regarding the Executrix's Petition filed September 1, 1981, as is found appropriate.

Gary R. Cassavechio

Judge of Probate Court
12/15/81 - date of issue

THE STATE OF NEW HAMPSHIRE

STRAFFORD, SS. COURT OF PROBATE

ESTATE OF EUDORE J. SYLVAIN

V. A15445

CHARLES H. SYLVAIN

DECREE

At a special Court of Probate held at Dover, in said County, on the twenty-sixth day of January, 1982, a hearing was held upon the allowance of the Fourth and Final Account of Priscilla S. Henderson, Executrix of the Estate of Eudore J. Sylvain. Present at hearing were Richard P. Marsh, Esquire, Counsel for the Executrix, and Charles H. Sylvain, representing himself pro se, as an interested party (residuary legatee). Mr. Sylvain essentially objects to the Executrix's sale of 300 shares of Profile Bank Shares, Inc., sold during the period of said accounting which resulted in a net gain to the estate of $3,110.25 (see Schedule A). While the Court finds that in selling the stock she acted in a fiduciary capacity and was therefore subject to fiduciary trust, the Executrix

did so impartially, prudently under the circumstances then existing and without breach or violation of said trust. Likewise, to the extent Mr. Sylvain objects to the sale of the 36 shares of Profile Bank Shares, Inc. (See Schedule 5), although the same were sold at a net loss to the Estate of $303.88, in selling the same it is found that the Executrix did not violate her fiduciary trust. Furthermore, to the extent Mr. Sylvain argues that the Executrix violated her fiduciary duty by not investing the net proceeds derived from the foregoing sale of 300 shares of Profile Bank Shares, Inc. in more lucrative or higher yielding assets, it is expressly found that no such violation arose or exists under the attendant circumstances. The record in this estate patently manifests the Executrix's desire

to expeditiously settle her administration in the face of repeated obstacles raised by her brother (Charles H. Sylvain) to prevent the effectuation of settlement absent his ability to successfully challenge the integrity of his father's Will, or at least those portions which Mr. Sylvain finds most objectionable. Notwithstanding his failure to accomplish his goal after repeated legal challenges in this Court, the Superior Court and the Supreme Court of New Hampshire, Mr. Sylvain continues his fight through the filing of endless motions for discovery and pleadings of every other nature and description, known or previously unknown to the law, but all presumably in pursuit of his personal definition of justice. In recognition that Mr. Sylvain may sincerely believe

in his cause and that he has voluntarily proceeded to represent himself, this Court has stretched the limits of its patience and accomodation to the point of pure exhaustion, which is to say nothing of the inconvenience, hardship and added expense incurred and suffered by both the Executrix, in her respective fiduciary and individual capacities and the estate.

This estate demands to be closed, and it is with all the foregoing in mind that this Court respectfully requests that, if, as is presently anticipated, Mr. Sylvain proceeds with appeal, the Supreme Court will act as expeditiously as possible to resolve the issues raised.

Upon the arguments, testimony, and evidence presented it is decreed that the Fourth and Final Account of Priscilla

S. Henderson as Executrix of the Will of Eudore J. Sylvain, having been filed and notice thereof having been given, or dispensed with according to law, that said fiduciary would exhibit her account of said administration at a special session of the Strafford County Probate Court held the twenty-sixth day of January, 1982, the aforesaid Fourth and Final Account is allowed as submitted. The special Session fee of the Court for Contested Hearing shall be paid by Charles H. Sylvain.

As this Court reserved ruling upon the Executrix's Petition filed September 1, 1981, after hearing October 28, 1981 (see order dated December 15, 1981) the Court hereby rules that said petition is granted to the extent, but only to the extent, that if an appeal is perfected

by Charles H. Sylvain upon the allowance of the Fourth and Final Account and said allowance shall be affirmed by the Supreme Court upon a further finding that he has acted in a frivolous fashion or for the purpose of delaying the settlement of the Estate, in addition to such costs and/or interest as the Executrix and/or the Estate may otherwise be awarded, the Executrix is authorized to deduct from Charles H. Sylvain's distributive share of the Estate and pay to the appropriate party, the reasonable legal fees incurred by the Estate, but not exceeding $1,500.

It is further ordered that if upon failure to appeal within thirty days or upon affirmance after appeal, Charles H. Sylvain shall fail or refuse to accept or receipt for his distributive residuary

share of the estate, after adjustment for any legal expenses, Court costs or fees, or other costs and interest made solely chargeable against his share, or otherwise to be paid by him pursuant to this decree or ruling of the New Hampshire Supreme Court, the Executrix may have leave to pay such share over to the State Treasurer pursuant to RSA 561:10. The amount of any appeal bond shall be determined by the Court upon notice of appeal timely filed.

Lastly, it is ruled and ordered, except insofar as may be otherwise impliedly or expressly ruled and ordered in this decree or on the record to the contrary, and to the extent a ruling or order is otherwise required, that Charles H. Sylvain's "Motion to strike Answer of 1/15 1982 from the Files with Further

Exceptions to said Answers and Objections to said Prayers, and Motion to Dismiss, If Necessary" (filed 1/25 1982), his pleading entitled "The Petitioner's Answers, Demurrers and Counterclaims of Executrix' Petition dated 9/1/81" (filed 1/25 1982), his pleading entitled "Discussion and Motions per Fourth and Final Account" dated 12/29/81 (filed 1/20/82), and his pleading entitled "Objections to Fourth and Final Accounting" dated 12/29/81 and Petition dated 9/1/81, all by the Executrix, Priscilla S. Henderson and "Motions for Continuance and Discovery and Other" (filed 1/8/82) are all denied. In denying the foregoing, the Court notes that from the extensive probate file records and the many hearings had and/or rulings made during the course of the administration of this estate, most, if

not all the issues, or objections raised have been resolved on a final basis previously, are now moot, are barred by laches or estoppel, are presently irrelevent or immaterial to matters pending, are not within the jurisdiction of this Court, lack foundation in law or fact, have not been sufficiently proven, have been presented in such a convoluted, vague or ambiguous fashion as to defy comprehension, were not timely raised, are too speculative, conjectural or uncertain, or to the extent this Court has discretion relative to granting such matters, it declines to do so.

Gary R. Cassavechia

Judge of the Probate Court

Court's Decree of 1/26/82 issued on 2/4/82

The State of New Hampshire

Strafford, SS. Court of Probate

ESTATE OF EUDORE J. SYLVAIN

V A15445

CHARLES H. SYLVAIN

APPROPRIATE RULINGS OF THE STRAFFORD COUNTY PROBATE COURT DURING THE HEARING OF 1/26/82 AND NECESSARY TESTIMONY

*** MR. SYLVAIN: But I appreciate it if you hear Dr. Hoyt in reference to the petition of 9-1-81, which is as you have delineated and reserved and will make such decision when appropriate.

THE COURT: Well, the Court has already taken the testimony at the hearing with regard to that petition. The Court reserved ruling until the final account and specifically the order states there will be no testimony or other matters brought before the Court in this matter other than the fourth and final account.

And as such, I am going to deny your

request and discharge Dr. Hoyt from further attendance.

MR. SYLVAIN: May I further state, your Honor, that in my brief to this Court, I have stated that in your decree that you stated, I could have asked for a continuance ***.

I stated a case in my brief stating that when a man does not have an opportunity to make a defense, that said action--said statement in said decree could, therefore, be in error.

Therefore, what I'm saying to you, your Honor, before our last appearance--and I have maintained my special appearance because you didn't have jurisdiction over me, over my person--I stated--I reiterate in this particular brief my grounds that said statement and decree is possibly in error and I also stated a New Hampshire case relative to that. And I concurred that you stated that the account of said

matter was to be discussed at this particular hearing.

*** And since you have reserved--which means to retain for the future that you--it would seem unfair to make a decision to that petition without testimony from the defense.

In other words, the defense has an opportunity to be heard and the defense has not been heard on that petition because on our last meeting, you didn't have jurisdiction on my person and any matters that you held concerning that petition is, therefore, to be ruled otherwise or to be ruled by some other court as null and void.

THE COURT: All right. With all due respect, Mr. Sylvain, the Court stands on its ruling of December 15, 1981, and the Court stands on its ruling with respect to Dr. Hoyt.

Dr. Hoyt, you're excused.

*** MR. SYLVAIN: *** --the sale of stock at that particular time I reiterate that the executrix was then acting as a trustee according to case law of New Hampshire.

Therefore, she should have notified this legatee of said matter before selling said stock. ***

I requested to be heard on discovery. Any discovery relative to this account should be discussed whether we are going to have discovery. It's quite unfair, your Honor, to request discovery and discuss the account and have discovery afterwards. It seems to me the only reasonable and adequate way is to discuss the things that should be discovered so we can have ample time to discuss the discovery and study the discovery before we study the account. *** So the law is clear ***. And within a year, a year and a half when this estate was not settled, when those

stocks were not sold, it was the duty then of the executrix as a trustee to invest the estate and under the conditions of New Hampshire law. ***

MR. SYLVAIN: Well, I would like to go over the part of the account. And besides that, I would like for you to make a determination of discovery. Then we can discuss the account.

THE COURT: Your motions for discovery are denied.

MR. SYLVAIN: Motions for discovery are denied. I object and except. *** I stipulate in there the reason for discovery. Because when you ask questions, you don't get no answers.

And time and time again in this court, I've asked questions and not received any answers. And it's only reasonable that I take a procedure to try to acquire answers there. No matter how ambiguous they may seem to your Honor, they are not ambiguous

to me.

I like answers. You either know or you don't know in this world, and when you don't know, you try to find out. And if you don't find out, you're just ignorant. *** trying to close an estate under those sad circumstances, I find it somewhat provoking. I find it somewhat unreasonable. I find that you are not taking note of evidence that could have been obtained before this court. I find that you are coming to conclusions that are not worthy of conclusions according to the truth of the situation.

Just because an administration has been over the years--over ten years, does not mean justification has been served. This court is to see that justice can be served, not the time of administration, but to see that justice can be served. And with the intent of closing this administration is a denial of seeing justice

obtained.

And furthermore, under the McInnes and Goldthwaite, if the causation of the executrix is at fault, she's not even to be awarded attorney fees. ***

MR. SYLVAIN: Well, it's the usual procedure and accounting to if you are going to check the account, to check the account. You just don't check the figures, you check the amplifications of the account. The amplifications of the account are what is going to make the statistics. You either believe them or you don't believe them. If you don't believe them, you ask to see them.

I feel that that is unreasonable and I object and except. ***

Now, this estate has been unduly prolonged. Now the reasons for the unduliness or whatever the delineation of that word is is under consideration. This Court did not want to consider the

reasons why this administration has been unduly prolonged. And I object and except to the reasons why this estate has been unduly prolonged because the Court did not want to hear that particular motion.

Therefore, as far as the account, your Honor, I submit no more objections to said account but I would request a continuance for the hearing on the petition of 9-1-81, which is reserved. The reserved means for further hearings and consideration.

THE COURT: Your request is denied.

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 82-100 Appeal of Charles H. Sylvain the court upon April 22, 1982 made the following order: Motion for reconsideration is denied.

Ralph H. Wood,

Clerk